IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.8.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.27069 of 2007

Tvl. E.I. Dupont (I)(P) Ltd.,
represented by its Power of Attorney,
Mr.Sasikanta Nayak,
90, Dr. Radhakrishnan Salai,
Chennai - 600 004. .. Petitioner

vs.

The Deputy Commercial Tax Officer,
Ice House Assessment Circle,
Greenways Road,
Chennai - 600 028. .. Respondent

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records on the files of the respondent in CST.790317/2003-04, dated 22.6.2007, and quash the same.

For petitioner : Mr.A.R.Jeyasanker
For respondent : Mr.R.Mahadevan
Additional Government Pleader

O R D E R

Mr.R.Mahadevan, the learned Additional Government Pleader takes notice for the respondent.

2. With the consent of the learned counsels appearing on either side, the writ petition itself is taken up for final disposal.

3. It is submitted that the petitioner is a registered dealer on the files of the respondent, both under The Tamil Nadu General Sales Tax Act, 1959, and The Central Sales Tax Act, 1956. The petitioner is a dealer in Paints, Plastic Raw Materials etc. It is further submitted that during the year 2003-2004, the petitioner has effected interstate and branch transfer and consignment sales outside the state.

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4. It is also submitted that with regard to interstate sales effected, the tax was paid at 4% as against Form C declaration, as prescribed under The Central Sales Tax Act, 1956, and the petitioner has claimed exemption on branch transfer and consignment sales on condition of production of Form F declaration.

5. The respondent by an order, dated 6.2.2007, has levied higher rate of tax on certain turnover covered by Form C declaration and also disallowed the claim for exemption on branch transfer covered under Form F. Even though the petitioner had requested the respondent to consider the Forms C and F already filed by the petitioner, along with the letter, dated 23.3.2007, and to reopen the assessment by invoking the powers given, under Section 55 of The Tamil Nadu General Sales Tax Act, 1959, read with Section 9(2) of The Central Sales Tax Act, 1956, the respondent has not considered the Forms as requested by the petitioner.

6. The learned Government Pleader appearing on behalf of the respondent has submitted that the claims made by the petitioner, by its letter, dated 23.3.2007, would be considered by the respondent, on merits and in accordance with law.

7. Further, it has been submitted before this Court by the learned counsel appearing on behalf of the petitioner that the orders have been passed by this Court in W.P.No.2791 of 2005 and W.P.No.2085 of 2006, based on the order of the Division Bench of this Court, dated 5.4.2004, made in W.A.No.4 of 2003.

8. In the light of the above referred decisions of this Court and based on the submission made by the learned counsel appearing on behalf of the respondent, this writ petition stands allowed. While setting aside the order impugned, the directions of the Division Bench, as mentioned in paragraph 8 of the order, dated 5.4.2004, in W.A.No.4 of 2003, shall be followed.

9. Paragraph No.8 of the order reads as follows:

> "8. Accordingly, the writ appeal is disposed of with liberty to the petitioner to satisfy the assessing officer by producing the invoice number and the date of export, the name of the ship and port from which it is exported, the date of departure of the ship and copy of the Bill of Lading in support of actual export and actual shipment of goods. In that event, it is open to the assessing officer to consider the same for the purpose of exemption."

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10. The respondent shall also permit the petitioner to file an application, if necessary, to summon the documents from the Export House concerned or from the Assessing Officer who has jurisdiction over the Export House by obtaining the copy of the foreign order for the concerned agreement for the better disposal of the assessment proceedings. The writ petition stands allowed with the above directions. No costs. Consequently, connected M.P.No.1 of 2007 is closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Deputy Commercial Tax Officer,
   Ice House Assessment Circle,
   Greenways Road,
   Chennai - 600 028.

+1 cc to Government Pleader Sr.No.5173.

SSK(CO)
dcp/30.8

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